

EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO.: 2009-0493-PWS-E **TCEQ ID:** RN101193803 **CASE NO.:** 16926

RESPONDENT NAME: City of Huxley

ORDER TYPE:		
<input type="checkbox"/> 1660 AGREED ORDER	<input checked="" type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
CASE TYPE:		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE
<input checked="" type="checkbox"/> PUBLIC WATER SUPPLY	<input type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION
<p>SITE WHERE VIOLATION(S) OCCURRED: City of Huxley, 11798 Farm-to-Market Road 2694, Shelbyville, Shelby County</p> <p>TYPE OF OPERATION: Public water supply</p> <p>SMALL BUSINESS: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>OTHER SIGNIFICANT MATTERS: There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.</p> <p>INTERESTED PARTIES: No one other than the ED and the Respondent has expressed an interest in this matter.</p> <p>COMMENTS RECEIVED: The <i>Texas Register</i> comment period expired on August 31, 2009. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney/SEP Coordinator: Mr. Phillip Hampsten, SEP Coordinator, Enforcement Division, MC 219, (512) 239-6732 TCEQ Enforcement Coordinator: Ms. Andrea Linson-Mgbeoduru, Enforcement Division, Enforcement Team 2, MC 169, (512) 239-1482; Ms. Cari-Michel La Caille, Enforcement Division, MC 219, (512) 239-1387 Respondent: The Honorable Larry Vaughn, Mayor, City of Huxley, 11798 Farm-to-Market Road 2694, Shelbyville, Texas 75973 Respondent's Attorney: Not represented by counsel on this enforcement matter</p>		

VIOLATION SUMMARY CHART:		
VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation: <input type="checkbox"/> Complaint <input type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input checked="" type="checkbox"/> Records Review</p> <p>Date(s) of Complaints Relating to this Case: None</p> <p>Date of Investigation Relating to this Case: March 16, 2009</p> <p>Date of NOV/NOE Relating to this Case: March 14, 2009 (NOE)</p> <p>Background Facts: This was a record review.</p> <p>WATER</p> <p>1) Failure to comply with the maximum contaminant level ("MCL") of 0.080 milligrams per liter ("mg/L") for total trihalomethanes ("TTHM") based on a running annual average ("RAA") [30 TEX. ADMIN. CODE § 290.113(f)(4), TEX. HEALTH & SAFETY CODE § 341.0315(c), and TCEQ Agreed Order Docket No. 2004-0932-PWS-E, Ordering Provision No. 3].</p> <p>2) Failure to comply with the MCL of 0.060 mg/L for haloacetic acids ("HAA5") based on a RAA [30 TEX. ADMIN. CODE § 290.113(f)(5), TEX. HEALTH & SAFETY CODE § 341.0315(c), and TCEQ Agreed Order Docket No. 2004-0932-PWS-E, Ordering Provision No. 3].</p>	<p>Total Assessed: \$2,745</p> <p>Total Deferred: \$0 <input type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay</p> <p>SEP Conditional Offset: \$2,745</p> <p>Total Paid (Due) to General Revenue: \$0</p> <p>Site Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Person Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Major Source: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p> <p>Findings Orders Justification: Indifference to legal duty. This case involves violations of a prior Agreed Order.</p>	<p>Ordering Provisions:</p> <p>1) The Order will require the Respondent to implement and complete a Supplemental Environmental Project (SEP). (See SEP Attachment A)</p> <p>2) The Order will also require the Respondent to:</p> <p>a. Within 365 days after the effective date of this Agreed Order:</p> <p>i. Return to compliance with the running annual average MCL for TTHM; and</p> <p>ii. Return to compliance with the running annual average MCL for HAA5.</p> <p>b. Within 380 days after the effective date of this Agreed Order, submit written certification and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision No. 2.a.</p>

Additional ID No(s): PWS ID No. 2100019

Attachment A
Docket Number: 2009-0493-PWS-E

SUPPLEMENTAL ENVIRONMENTAL PROJECT

Respondent: City of Huxley

Payable Penalty Amount: Two Thousand Seven Hundred Forty-Five Dollars (\$2,745)

SEP Amount: Two Thousand Seven Hundred Forty-Five Dollars (\$2,745)

Type of SEP: Pre-approved

Third-Party Recipient: Texas Association of Resource Conservation and Development Areas, Inc. ("RC&D")- Water or Wastewater Treatment Assistance

Location of SEP: Shelby County

The Texas Commission on Environmental Quality ("TCEQ") agrees to offset a portion of the administrative Penalty Amount assessed in this Agreed Order for the Respondent to contribute to a Supplemental Environmental Project ("SEP"). The offset is equal to the SEP Amount set forth above and is conditioned upon completion of the project in accordance with the terms of this Attachment A.

1. Project Description

A. Project

The Respondent shall contribute to the Third-Party Recipient pursuant to the agreement between the Third-Party Recipient and the TCEQ. Specifically, the contribution will be used to provide low income rural homeowners with assistance to enable the repair or replacement of their failing on-site wastewater systems. SEP monies will be used to pay for the labor and materials costs related to repairing or replacing the failing systems. The recipients will not be charged for the cost of replacing or repairing the failing systems.

The Respondent certifies that there is no prior commitment to do this project and that it is being performed solely in an effort to settle this enforcement action.

B. Environmental Benefit

This SEP will provide a discernible environmental benefit by protecting water sources for drinking, recreation, and wildlife from contamination from failing treatment systems.

C. Minimum Expenditure

The Respondent shall contribute at least the SEP Amount to the Third-Party Recipient and comply with all other provisions of this SEP.

2. Performance Schedule

Within 30 days after the effective date of this Agreed Order, the Respondent must contribute the SEP Amount to the Third-Party Recipient. The Respondent shall mail the contribution, with a copy of the Agreed Order, to:

Texas Association of Resource Conservation and Development Areas, Inc.
1716 Briarcrest Drive, Suite 510
Bryan, Texas 77802-2700

3. Records and Reporting

Concurrent with the payment of the SEP Amount, the Respondent shall provide the TCEQ SEP Coordinator with a copy of the check and transmittal letter indicating full payment of the SEP Amount to the Third-Party Recipient. The Respondent shall mail a copy of the check and transmittal letter to:

Enforcement Division
Attention: SEP Coordinator, MC 219
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

4. Failure to Fully Perform

If the Respondent does not perform its obligations under this SEP in any way, including full payment of the SEP Amount and submittal of the required reporting described in Section 3 above, the Executive Director may require immediate payment of all or part of the SEP Amount.

The check for any amount due shall be made out to "Texas Commission on Environmental Quality" and mailed to:

Litigation Division
Attention: SEP Coordinator, MC 175
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088

The Respondent shall also mail a copy of the check to the TCEQ SEP Coordinator at the address in Section 3 above.

5. Publicity

Any public statements concerning this SEP made by or on behalf of the Respondent must include a clear statement that the project was performed as part of the settlement of an enforcement action brought by the TCEQ. Such statements include advertising, public relations, and press releases.

6. Clean Texas Program

The Respondent shall not include this SEP in any application made to TCEQ under the "Clean Texas" (or any successor) program(s). Similarly, the Respondent may not seek recognition for this contribution in any other state or federal regulatory program.

7. Other SEPs by TCEQ or Other Agencies

The SEP identified in this Agreed Order has not been, and shall not be, included as an SEP for the Respondent under any other Agreed Order negotiated with the TCEQ or any other agency of the state or federal government.



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

DATES	Assigned	30-Mar-2009	Screening	6-Apr-2009	EPA Due	28-Feb-2007
	PCW	6-Apr-2009				

RESPONDENT/FACILITY INFORMATION	
Respondent	City of Huxley
Reg. Ent. Ref. No.	RN101193803
Facility/Site Region	10-Beaumont
Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	16926	No. of Violations	2
Docket No.	2009-0493-PWS-E	Order Type	Findings
Media Program(s)	Public Water Supply	Government/Non-Profit	Yes
Multi-Media		Enf. Coordinator	Andrea Linson-Mgbeodur
		EC's Team	Enforcement Team 2
Admin. Penalty \$ Limit Minimum	\$50	Maximum	\$1,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) **Subtotal 1**

ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

Compliance History Enhancement **Subtotals 2, 3, & 7**

Notes Enhancement due to 11 prior Notices of Violation ("NOV") with same or similar violations as those in the current enforcement action, four dissimilar NOVs, and one agreed final enforcement order containing a denial of liability.

Culpability Enhancement **Subtotal 4**

Notes The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply Total Adjustments **Subtotal 5**

Economic Benefit Enhancement* **Subtotal 6**

Total EB Amounts	\$2,719
Approx. Cost of Compliance	\$12,500

*Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7 **Final Subtotal**

OTHER FACTORS AS JUSTICE MAY REQUIRE **Adjustment**

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes

Final Penalty Amount

STATUTORY LIMIT ADJUSTMENT **Final Assessed Penalty**

DEFERRAL Reduction **Adjustment**

Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes No deferral is recommended for Findings Orders.

PAYABLE PENALTY

Screening Date 6-Apr-2009

Docket No. 2009-0493-PWS-E

PCW

Respondent City of Huxley

Policy Revision 2 (September 2002)

Case ID No. 16926

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101193803

Media [Statute] Public Water Supply

Enf. Coordinator Andrea Linson-Mgbeoduru

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOV's with same or similar violations as those in the current enforcement action (number of NOV's meeting criteria)	11	55%
	Other written NOV's	4	8%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	1	20%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (number of judgments or consent decrees meeting criteria)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (number of counts)	0	0%
Emissions	Chronic excessive emissions events (number of events)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which notices were submitted)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)	0	0%
Please Enter Yes or No			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 83%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes

Enhancement due to 11 prior Notices of Violation ("NOV") with same or similar violations as those in the current enforcement action, four dissimilar NOV's, and one agreed final enforcement order containing a denial of liability.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 83%

Screening Date 6-Apr-2009	Docket No. 2009-0493-PWS-E	PCW
Respondent City of Huxley		<small>Policy Revision 2 (September 2002)</small>
Case ID No. 16926		<small>PCW Revision October 30, 2008</small>
Reg. Ent. Reference No. RN101193803		
Media [Statute] Public Water Supply		
Enf. Coordinator Andrea Linson-Mgbeoduru		
Violation Number 1		
Rule Cite(s)	30 Tex. Admin. Code § 290.113(f)(4), Tex. Health & Safety Code § 341.0315(c) and TCEQ Agreed Order Docket No. 2004-0932-PWS-E, Ordering Provision No. 3	
Violation Description	The Respondent failed to comply with the maximum contaminant level ("MCL") of 0.080 milligrams per liter ("mg/L") for total trihalomethanes ("TTHM") based on a running annual average ("RAA"). Specifically, at the time of the record review, it was documented that the RAA concentration for TTHM was 0.179 mg/L for the third quarter of 2006, 0.152 mg/L for the fourth quarter of 2006, 0.149 mg/L for the first quarter of 2007, 0.188 mg/L for the second quarter of 2007, 0.206 mg/L for the third quarter of 2007, 0.279 mg/L for the fourth quarter of 2007, 0.294 mg/L for the first quarter of 2008, 0.280 mg/L for the second quarter of 2008, 0.273 mg/L for the third quarter of 2008, and 0.215 mg/L for the fourth quarter of 2008.	
	Base Penalty	\$1,000
>> Environmental, Property and Human Health Matrix		
	Harm	
	Major Moderate Minor	
OR	Actual	x
	Potential	
	Percent	25%
>> Programmatic Matrix		
	Falsification Major Moderate Minor	
		0%
Matrix Notes	Customers of the water supply have been exposed to significant amounts of pollutants that do not exceed levels protective of human health.	
	Adjustment	\$750
		\$250
Violation Events		
	Number of Violation Events	3
		1015
		Number of violation days
	mark only one with an x	
	daily	
	weekly	
	monthly	
	quarterly	
	semiannual	
	annual	x
	single event	
	Violation Base Penalty	\$750
	Three annual events are recommended, calculated from the effective date of TCEQ Agreed Order Docket No. 2004-0932-PWS-E, June 26, 2006, to the screening date, April 6, 2009.	
Good Faith Efforts to Comply		
	0.0% Reduction	\$0
	Before NOV NOV to EDPRP/Settlement Offer	
	Extraordinary	
	Ordinary	
	N/A	x (mark with x)
Notes	The Respondent does not meet the good faith criteria for this violation.	
	Violation Subtotal	\$750
Economic Benefit (EB) for this violation		
	Estimated EB Amount	\$1,632
	Statutory Limit Test	
	Violation Final Penalty Total	\$1,373
	This violation Final Assessed Penalty (adjusted for limits)	\$1,373

Economic Benefit Worksheet

Respondent City of Huxley
Case ID No. 16926
Reg. Ent. Reference No. RN101193803
Media Public Water Supply
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Delayed Costs							
Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$7,500	26-Jun-2006	31-Oct-2010	4.35	\$1,632	n/a	\$1,632

Notes for DELAYED costs
 The delayed costs includes the amount for the water supply to implement an alternative form of disinfection, calculated from the effective date of TCEQ Agreed Order Docket No. 2004-0923-PWS-E, to the estimated date of compliance.

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)							
Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance \$7,500 **TOTAL** \$1,632

Screening Date 6-Apr-2009	Docket No. 2009-0493-PWS-E	PCW
Respondent City of Huxley		<small>Policy Revision 2 (September 2002)</small>
Case ID No. 16926		<small>PCW Revision October 30, 2008</small>
Reg. Ent. Reference No. RN101193803		
Media [Statute] Public Water Supply		
Enf. Coordinator Andrea Linson-Mgbeoduru		
Violation Number <input type="text" value="2"/>		
Rule Cite(s)	30 Tex. Admin. Code § 290.113(f)(5), Tex. Health & Safety Code § 341.0315(c) and TCEQ Agreed Order Docket No. 2004-0932-PWS-E, Ordering Provision No. 3	
Violation Description	The Respondent failed to comply with the MCL of 0.060 mg/L for haloacetic acids ("HAA5") based on RAAs. Specifically, at the time of the record review, it was documented that the RAA concentration for HAA5 was 0.073 mg/L for the fourth quarter of 2008.	
	Base Penalty	<input type="text" value="\$1,000"/>
>> Environmental, Property and Human Health Matrix		
OR	Harm	
	Release	Major Moderate Minor
	Actual	<input type="text"/> <input checked="" type="text" value="x"/> <input type="text"/>
	Potential	<input type="text"/> <input type="text"/> <input type="text"/>
	Percent	<input type="text" value="25%"/>
>> Programmatic Matrix		
	Falsification	Major Moderate Minor
	<input type="text"/>	<input type="text"/> <input type="text"/> <input type="text"/>
	Percent	<input type="text" value="0%"/>
Matrix Notes	Customers of the water supply have been exposed to significant amounts of pollutants which did not exceed levels protective of human health.	
	Adjustment	<input type="text" value="\$750"/>
		<input type="text" value="\$250"/>
Violation Events		
Number of Violation Events	<input type="text" value="3"/>	<input type="text" value="1015"/> Number of violation days
<small>mark only one with an x</small>	daily	<input type="text"/>
	weekly	<input type="text"/>
	monthly	<input type="text"/>
	quarterly	<input type="text"/>
	semiannual	<input type="text"/>
	annual	<input checked="" type="text" value="x"/>
single event	<input type="text"/>	
	Three annual events are recommended, calculated from the effective date of TCEQ Agreed Order Docket No. 2004-0932-PWS-E, June 26, 2006, to the screening date, April 6, 2009.	
Good Faith Efforts to Comply	<input type="text" value="0.0%"/> Reduction	<input type="text" value="\$0"/>
	<small>Before NOV NOV to EDPRP/Settlement Offer</small>	
Extraordinary	<input type="text"/> <input type="text"/>	
Ordinary	<input type="text"/> <input type="text"/>	
N/A	<input checked="" type="text" value="x"/> (mark with x)	
Notes	The Respondent does not meet the good faith criteria for this violation.	
	Violation Subtotal	<input type="text" value="\$750"/>
Economic Benefit (EB) for this violation	Statutory Limit Test	
Estimated EB Amount	<input type="text" value="\$1,088"/>	Violation Final Penalty Total <input type="text" value="\$1,373"/>
	This violation Final Assessed Penalty (adjusted for limits) <input type="text" value="\$1,373"/>	

Economic Benefit Worksheet

Respondent City of Huxley
Case ID No. 16926
Reg. Ent. Reference No. RN101193803
Media Public Water Supply
Violation No. 2

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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No commas or \$

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$5,000	26-Jun-2006	31-Oct-2010	4.35	\$1,088	n/a	\$1,088

Notes for DELAYED costs The delayed costs includes the amount for the water supply to implement an alternative form of disinfection, calculated from the effective date of TCEQ Agreed Order Docket No. 2004-0923-PWS-E, to the estimated date of compliance.

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance	\$5,000	TOTAL	\$1,088
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Compliance History Report

Customer/Respondent/Owner-Operator: CN600639678 City of Huxley Classification: AVERAGE Rating: 2.76
Regulated Entity: RN101193803 CITY OF HUXLEY Classification: AVERAGE Site Rating: 5.00
ID Number(s): PUBLIC WATER SYSTEM/SUPPLY REGISTRATION 2100019
WATER LICENSING LICENSE 2100019
Location: 11798 FM 2694, SHELBYVILLE, SHELBY COUNTY, TX
TCEQ Region: REGION 10 - BEAUMONT
Date Compliance History Prepared: April 03, 2009
Agency Decision Requiring Compliance History: Enforcement
Compliance Period: April 03, 2004 to April 03, 2009
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History
Name: Andrea Linson-Mgbeoduru Phone: 512-239-1482

Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? Yes
2. Has there been a (known) change in ownership of the site during the compliance period? No
3. If Yes, who is the current owner? N/A
4. If Yes, who was/were the prior owner(s)? N/A
5. When did the change(s) in ownership occur? N/A
6. Rating Date: 9/1/2008 Repeat Violator: NO

Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.
Effective Date: 06/26/2006 ADMINORDER 2004-0932-PWS-E
- Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter D 290.46(e)(6)
5A THC Chapter 341, SubChapter A 341.033(a)
Description: Failed to operate a water system that treats surface water under the direct supervision of a licensed water works operator who holds a Class "B" or higher surface water license.
Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter F 290.113(f)(4)
5A THC Chapter 341, SubChapter A 341.0315(c)
Description: Exceeded the maximum contaminant level (MCL) based on a running annual average (RAA) for total trihalomethanes (TTHM) for the second quarter of 2004.
Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter D 290.42(l)
Description: Failed to compile and maintain a plant operations manual for operator review and reference.
Classification: Major
Citation: 30 TAC Chapter 290, SubChapter F 290.113(f)(5)
5A THC Chapter 341, SubChapter A 341.0315(c)
Description: Exceeded the MCL based on a RAA for haloacetic acids (HAA5) for the third quarter of 2004.
- B. Any criminal convictions of the state of Texas and the federal government.
N/A
- C. Chronic excessive emissions events.
N/A
- D. The approval dates of investigations. (CCEDS Inv. Track. No.)
1 06/30/2004 (278227)
2 08/20/2004 (288121)

3 09/22/2004 (334529)
 4 12/02/2004 (340362)
 5 01/11/2005 (344578)
 6 08/18/2006 (484245)
 7 11/10/2006 (738422)
 8 01/04/2007 (512417)
 9 01/30/2007 (738579)
 10 02/26/2007 (536337)
 11 05/18/2007 (738583)
 12 09/28/2007 (738585)
 13 11/02/2007 (595111)
 14 11/15/2007 (738588)
 15 02/08/2008 (738595)
 16 04/25/2008 (653344)
 17 07/30/2008 (738599)
 18 08/28/2008 (738601)
 19 11/03/2008 (738606)
 20 12/05/2008 (688193)
 21 01/16/2009 (738609)
 22 01/23/2009 (738612)
 23 03/25/2009 (739066)

E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)

Date: 08/18/2006 (484245) CN600639678
 Self Report? NO Classification: Major
 Citation: 30 TAC Chapter 290, SubChapter D 290.45(b)(2)(B)
 Description: Failed to provide a water treatment Facility of 0.6 gallons per minute (gpm).
 Self Report? NO Classification: Major
 Citation: 30 TAC Chapter 290, SubChapter D 290.41(e)(2)(C)
 Description: Failed to establish a restriction zone of a 200 foot radius from the raw water intake in city ordinances.
 Self Report? NO Classification: Minor
 Citation: 30 TAC Chapter 290, SubChapter D 290.43(c)(4)
 Description: Failure to have a working water level indicator, for the 0.10 MG clearwell and the 0.064 MG ground storage tank.
 Self Report? NO Classification: Minor
 Citation: 30 TAC Chapter 290, SubChapter D 290.43(c)(1)
 Description: Failure to have an appropriate roof vent screen for the 0.10 MG clearwell and the 0.064 MG ground storage tank.
 Self Report? NO Classification: Minor
 Citation: 30 TAC Chapter 290, SubChapter D 290.42(e)(5)
 Description: Failure to seal the top of the chemfloc drum.
 Self Report? NO Classification: Minor
 Citation: 30 TAC Chapter 290, SubChapter D 290.42(e)(4)(B)
 Description: Failure to have gas chlorine room void of electrical equipment at water plant.
 Self Report? NO Classification: Minor
 Citation: 30 TAC Chapter 290, SubChapter D 290.46(m)(4)
 Description: Failure to have a watertight service line in the control room for the standpipes.
 Self Report? NO Classification: Minor
 Citation: 30 TAC Chapter 290, SubChapter D 290.42(f)(1)(E)(i)
 Description: Failure to use an appropriate container for chlorine bleach.
 Self Report? NO Classification: Minor
 Citation: 30 TAC Chapter 290, SubChapter D 290.46(f)(4)(B)
 Description: Failure to correctly fill out the SWMOR.
 Self Report? NO Classification: Minor
 Citation: 30 TAC Chapter 290, SubChapter F 290.110(c)(5)(C)
 Description: Failure to monitor chlorine residual at different location within the distribution.
 Self Report? NO Classification: Minor
 Citation: 30 TAC Chapter 290, SubChapter F 290.121(a)
 Description: Failure to have a monitoring plan.

Date: 11/10/2006 (738422)

CN600639678

Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter F 290.113(f)(4)
Description: Violated the maximum contaminant level for trihalomethanes during the third quarter of 2006.

Date: 01/30/2007 (738579) CN600639678

Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter F 290.113(f)(4)
Description: Violated the maximum contaminant level for trihalomethanes during the fourth quarter of 2006.

Date: 02/26/2007 (536337) CN600639678

Self Report? NO Classification: Minor
Citation: 30 TAC Chapter 290, SubChapter D 290.45(b)(2)(C)
Description: Failure to meet a transfer pump capacity of 0.6 gpm per connection.

Date: 05/18/2007 (738583) CN600639678

Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter F 290.113(f)(4)
Description: Violated the maximum contaminant level for trihalomethanes during the first quarter of 2007.

Date: 09/10/2007 (593669) CN600639678

Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter D 290.46(e)(6)(A)
Description: Failure to employ at least one operator who holds a Class B or higher surface water license.

Date: 09/28/2007 (738585) CN600639678

Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter F 290.113(f)(4)
Description: Violated the maximum contaminant level for trihalomethanes during the second quarter of 2007.

Date: 11/15/2007 (738588) CN600639678

Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter F 290.113(f)(4)
Description: Violated the maximum contaminant level for trihalomethanes during the third quarter of 2007.

Date: 02/08/2008 (738595) CN600639678

Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter F 290.113(f)(4)
Description: Violated the maximum contaminant level for trihalomethanes during the fourth quarter of 2007.

Date: 07/30/2008 (738599) CN600639678

Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter F 290.113(f)(4)
Description: Violated the maximum contaminant level for trihalomethanes during the first quarter of 2008.

Date: 08/28/2008 (738601) CN600639678

Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter F 290.113(f)(4)
Description: Violated the maximum contaminant level for trihalomethanes during the second quarter of 2008.

Date: 11/03/2008 (738606) CN600639678

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter F 290.113(f)(4)
Description: Violated the maximum contaminant level for trihalomethanes during the third quarter of 2008.

Date: 12/05/2008 (688193)

CN600639678

Self Report? NO Classification: Minor
Citation: 30 TAC Chapter 290, SubChapter D 290.43(c)(4)
Description: Failure to have water level indicators on the ground storage tanks at the Possum Trot Plant.

Self Report? NO Classification: Minor
Citation: 30 TAC Chapter 290, SubChapter D 290.46(m)
Description: Failure to maintain the Possum Trot water plant.

Self Report? NO Classification: Minor
Citation: 30 TAC Chapter 290, SubChapter D 290.46(f)(3)(A)(i)(I)
Description: Failure to record the amount of chemical used each day.

Self Report? NO Classification: Minor
Citation: 30 TAC Chapter 290, SubChapter D 290.46(v)
Description: Failure to have all electrical wiring in conduit.

Self Report? NO Classification: Minor
Citation: 30 TAC Chapter 290, SubChapter D 290.46(m)
Description: Failure to maintain the center clearwell at the surface water treatment plant.

Self Report? NO Classification: Minor
Citation: 30 TAC Chapter 290, SubChapter D 290.46(f)(2)
Description: Failure to have backflow prevention assembly test reports available for review.

Self Report? NO Classification: Minor
Citation: 30 TAC Chapter 290, SubChapter D 290.46(s)(2)(B)(ii)
Description: Failure to check the calibration of the benchtop turbidimeters with secondary standards each time a series of samples is tested.

Self Report? NO Classification: Minor
Citation: 30 TAC Chapter 290, SubChapter D 290.42(f)(1)(E)(ii)
Description: Failure to provide adequate containment facilities for liquid chemical storage tanks.

Date: 01/16/2009 (738609)

CN600639678

Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter F 290.113(f)(5)
Description: Violated the maximum contaminant level for haloacetic acids during the fourth quarter of 2008.

Date: 01/23/2009 (738612)

CN600639678

Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter F 290.113(f)(4)
Description: Violated the maximum contaminant level for trihalomethanes during the fourth quarter of 2008.

- F. Environmental audits.
N/A
 - G. Type of environmental management systems (EMSs).
N/A
 - H. Voluntary on-site compliance assessment dates.
N/A
 - I. Participation in a voluntary pollution reduction program.
N/A
 - J. Early compliance.
N/A
- Sites Outside of Texas
N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
CITY OF HUXLEY
RN101193803

§
§
§
§
§

BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

**AGREED ORDER
DOCKET NO. 2009-0493-PWS-E**

At its _____ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding the City of Huxley ("the City") under the authority of TEX. HEALTH & SAFETY CODE ch. 341. The Executive Director of the TCEQ, through the Enforcement Division, and the City presented this agreement to the Commission.

The City understands that it has certain procedural rights at certain points in the enforcement process, including, but not limited to, the right to formal notice of violations, notice of an evidentiary hearing, the right to an evidentiary hearing, and a right to appeal. By entering into this Agreed Order, the City agrees to waive all notice and procedural rights.

It is further understood and agreed that this Order represents the complete and fully-integrated settlement of the parties. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable. The duties and responsibilities imposed by this Agreed Order are binding upon the City.

The Commission makes the following Findings of Fact and Conclusions of Law:

I. FINDINGS OF FACT

1. The City owns and operates a public water supply at 11798 Farm-to-Market Road 2694 in Shelbyville, Shelby County, Texas (the "Facility") that has approximately 802 service connections and serves at least 25 people per day for at least 60 days per year.

2. During a record review conducted on March 16, 2009, TCEQ staff documented that the City did not comply with the maximum contaminant level ("MCL") of 0.080 milligrams per liter ("mg/L") for total trihalomethanes ("TTHM") based on a running annual average ("RAA"). Specifically, at the time of the record review, it was documented that the RAA concentration for TTHM was 0.179 mg/L for the third quarter of 2006, 0.152 mg/L for the fourth quarter of 2006, 0.149 mg/L for the first quarter of 2007, 0.188 mg/L for the second quarter of 2007, 0.206 mg/L for the third quarter of 2007, 0.279 mg/L for the fourth quarter of 2007, 0.294 mg/L for the first quarter of 2008, 0.280 mg/L for the second quarter of 2008, 0.273 mg/L for the third quarter of 2008, and 0.215 mg/L for the fourth quarter of 2008.
3. During a record review conducted on March 16, 2009, TCEQ staff documented that the City did not comply with the MCL of 0.060 mg/L for haloacetic acids ("HAA5") based on a RAA. Specifically, at the time of the record review, it was documented that the RAA concentration for HAA5 was 0.073 mg/L for the fourth quarter of 2008.
4. The City received notice of the violations on March 19, 2009.

II. CONCLUSIONS OF LAW

1. The City is subject to the jurisdiction of the TCEQ pursuant to TEX. HEALTH & SAFETY CODE ch. 341 and the rules of the Commission.
2. As evidenced by Findings of Fact No. 2, the City failed to comply with the MCL of 0.080 mg/L for TTHM based on a RAA, in violation of 30 TEX. ADMIN. CODE § 290.113(f)(4), TEX. HEALTH & SAFETY CODE § 341.0315(c) and TCEQ Agreed Order Docket No. 2004-0932-PWS-E, Ordering Provision No. 3.
3. As evidenced by Findings of Fact No. 3, the City failed to comply with the MCL of 0.060 mg/L for HAA5 based on a RAA, in violation of 30 TEX. ADMIN. CODE § 290.113(f)(5), TEX. HEALTH & SAFETY CODE § 341.0315(c) and TCEQ Agreed Order Docket No. 2004-0932-PWS-E, Ordering Provision No. 3.
4. Pursuant to TEX. HEALTH & SAFETY CODE § 341.049, the Commission has the authority to assess an administrative penalty against the City for violations of the Texas Water Code and the Texas Health and Safety Code within the Commission's jurisdiction; for violations of rules adopted under such statutes; or for violations of orders or permits issued under such statutes.
5. An administrative penalty in the amount of Two Thousand Seven Hundred Forty-Five Dollars (\$2,745) is justified by the facts recited in this Agreed Order, and considered in light of the factors set forth in TEX. HEALTH & SAFETY CODE § 341.049(b). Two Thousand Seven Hundred Forty-Five Dollars (\$2,745) shall be conditionally offset by the City's completion of a Supplemental Environmental Project ("SEP") as set forth in Attachment A.

III. ORDERING PROVISIONS

NOW, THEREFORE, THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY ORDERS that:

1. The City is assessed an administrative penalty in the amount of Two Thousand Seven Hundred Forty-Five Dollars (\$2,745) as set forth in Section II, Paragraph 5 above, for violations of TCEQ rules and state statutes. The payment of this administrative penalty and the City's compliance with all the terms and conditions set forth in this Agreed Order completely resolve the violations set forth by this Agreed Order in this action. However, the Commission shall not be constrained in any manner from requiring corrective actions or penalties for other violations that are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: City of Huxley, Docket No. 2009-0493-PWS-E" to:

Financial Administration Division, Revenues Section
Attention: Cashier's Office, MC 214
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088

2. The City shall implement and complete a SEP in accordance with TEX. WATER CODE § 7.067. As set forth in Section II, Paragraph 5 above, Two Thousand Seven Hundred Forty-Five Dollars (\$2,745) of the assessed administrative penalty shall be offset with the condition that the City implement the SEP defined in Attachment A, incorporated herein by reference. The City's obligation to pay the conditionally offset portion of the administrative penalty assessed shall be discharged upon final completion of all provisions of the SEP agreement.
3. The City shall undertake the following technical requirements:
 - a. Within 365 days after the effective date of the Agreed Order:
 - i. Return to compliance with the running annual average MCL for TTHM, in accordance with 30 TEX. ADMIN. CODE § 290.113; and
 - ii. Return to compliance with the running annual average MCL for HAA5, in accordance with 30 TEX. ADMIN. CODE § 290.113.
 - b. Within 380 days after the effective date of this Agreed Order, submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision No. 3.a. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

“I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.”

The certification shall be submitted to:

Order Compliance Team
Enforcement Division, MC 149A
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

with a copy to:

DBP Coordinator
Water Supply Division, MC 155
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

4. The provisions of this Agreed Order shall apply to and be binding upon the City. The City is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
5. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by the City shall be made in writing to the Executive Director. Extensions are not effective until the City receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
6. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas (“OAG”) for further enforcement proceedings without notice to the City if the Executive Director determines that the City has not complied with one or more of the terms or conditions in this Agreed Order.
7. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
8. This Agreed Order, issued by the Commission, shall not be admissible against the City in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission’s jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.

9. This Agreed Order may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreed Order may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes under this Agreed Order.
10. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties. By law, the effective date of this Agreed Order is the third day after the mailing date, as provided by 30 TEX. ADMIN. CODE § 70.10(b) and TEX. GOV'T CODE § 2001.142.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

John S. Zoller
For the Executive Director

8/21/2009
Date

I, the undersigned, have read and understand the attached Agreed Order in the matter of the City of Huxley. I am authorized to agree to the attached Agreed Order on behalf of the City of Huxley, and do agree to the specified terms and conditions. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I understand that by entering into this Agreed Order, the City of Huxley waives certain procedural rights, including, but not limited to, the right to formal notice of violations addressed by this Agreed Order, notice of an evidentiary hearing, the right to an evidentiary hearing, and the right to appeal. I agree to the terms of the Agreed Order in lieu of an evidentiary hearing. This Agreed Order constitutes full and final adjudication by the Commission of the violations set forth in this Agreed Order.

I also understand that failure to comply with the Ordering Provisions, if any, in this order and/or failure to timely pay the penalty amount, may result in:

- A negative impact on compliance history;
- Greater scrutiny of any permit applications submitted;
- Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions;
- Automatic referral to the Attorney General's Office of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.

Larry Vaughn
Signature

6/16/09
Date

LARRY VAUGHN
Name (Printed or typed)
Authorized Representative of
City of Huxley

MAYOR
Title

Instructions: Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenues Section at the address in Section III, Paragraph 1 of this Agreed Order.

SUPPLEMENTAL ENVIRONMENTAL PROJECT

Respondent: City of Huxley
Payable Penalty Amount: Two Thousand Seven Hundred Forty-Five Dollars (\$2,745)
SEP Amount: Two Thousand Seven Hundred Forty-Five Dollars (\$2,745)
Type of SEP: Pre-approved
Third-Party Recipient: Texas Association of Resource Conservation and Development Areas, Inc. ("RC&D")- Water or Wastewater Treatment Assistance
Location of SEP: Shelby County

The Texas Commission on Environmental Quality ("TCEQ") agrees to offset a portion of the administrative Penalty Amount assessed in this Agreed Order for the Respondent to contribute to a Supplemental Environmental Project ("SEP"). The offset is equal to the SEP Amount set forth above and is conditioned upon completion of the project in accordance with the terms of this Attachment A.

1. Project Description

A. Project

The Respondent shall contribute to the Third-Party Recipient pursuant to the agreement between the Third-Party Recipient and the TCEQ. Specifically, the contribution will be used to provide low income rural homeowners with assistance to enable the repair or replacement of their failing on-site wastewater systems. SEP monies will be used to pay for the labor and materials costs related to repairing or replacing the failing systems. The recipients will not be charged for the cost of replacing or repairing the failing systems.

The Respondent certifies that there is no prior commitment to do this project and that it is being performed solely in an effort to settle this enforcement action.

B. Environmental Benefit

This SEP will provide a discernible environmental benefit by protecting water sources for drinking, recreation, and wildlife from contamination from failing treatment systems.

C. Minimum Expenditure

The Respondent shall contribute at least the SEP Amount to the Third-Party Recipient and comply with all other provisions of this SEP.

2. Performance Schedule

Within 30 days after the effective date of this Agreed Order, the Respondent must contribute the SEP Amount to the Third-Party Recipient. The Respondent shall mail the contribution, with a copy of the Agreed Order, to:

Texas Association of Resource Conservation and Development Areas, Inc.
1716 Briarcrest Drive, Suite 510
Bryan, Texas 77802-2700

3. Records and Reporting

Concurrent with the payment of the SEP Amount, the Respondent shall provide the TCEQ SEP Coordinator with a copy of the check and transmittal letter indicating full payment of the SEP Amount to the Third-Party Recipient. The Respondent shall mail a copy of the check and transmittal letter to:

Enforcement Division
Attention: SEP Coordinator, MC 219
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

4. Failure to Fully Perform

If the Respondent does not perform its obligations under this SEP in any way, including full payment of the SEP Amount and submittal of the required reporting described in Section 3 above, the Executive Director may require immediate payment of all or part of the SEP Amount.

The check for any amount due shall be made out to "Texas Commission on Environmental Quality" and mailed to:

Litigation Division
Attention: SEP Coordinator, MC 175
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088

The Respondent shall also mail a copy of the check to the TCEQ SEP Coordinator at the address in Section 3 above.

5. Publicity

Any public statements concerning this SEP made by or on behalf of the Respondent must include a clear statement that the project was performed as part of the settlement of an enforcement action brought by the TCEQ. Such statements include advertising, public relations, and press releases.

6. Clean Texas Program

The Respondent shall not include this SEP in any application made to TCEQ under the "Clean Texas" (or any successor) program(s). Similarly, the Respondent may not seek recognition for this contribution in any other state or federal regulatory program.

7. Other SEPs by TCEQ or Other Agencies

The SEP identified in this Agreed Order has not been, and shall not be, included as an SEP for the Respondent under any other Agreed Order negotiated with the TCEQ or any other agency of the state or federal government.

